PRAMOD KUMAR SAXENA

v.

UNION OF INDIA & ORS.

(Writ Petition (Crl.) No. 58 of 2007)

SEPTEMBER 19, 2008

[C.K. THAKKER AND D.K. JAIN, JJ.]

Bail – Grant of – To under-trial prisoner since more than 10 years – Allegation that he, in capacity of Managing Director of an Investment Company, had committed systematic fraud and cheated several innocent investors of crores of rupees – 48 criminal cases against him in 6 different States for various offences under the IPC and also under the NI Act – He filed writ petition u/Art. 32 of Constitution seeking protection of his fundamental rights and release on bail – Held: Petitioner is entitled to limited relief in special circumstances of the case , keeping in view the fact that he is in jail since more than 10 years – Direction issued that if Petitioner applies for bail, an appropriate Court will release him on bail on his executing a bond to the satisfaction of such Court – Prayer for relief of consolidation of all cases and their trial in one Court, however, not accepted – Penal Code, 1860 – ss.406, 409 and 420 r/w s.120B – Negotiable Instruments Act, 1881 – s.138 – Constitution of India, 1950 – Art.32.

Code of Criminal Procedure, 1973 – s.436A – Under-trial prisoner detained since 1998 – Seeking bail on basis of s.436A – Held: s.436A came into force only in 2006 – Since no retrospective effect given to s.436A, it does not apply to facts of the present case – Code of Criminal Procedure (Amendment) Act, 2005.

According to the prosecution, the Writ Petitioner, in capacity of Managing Director of an Investment Company, committed systematic fraud and cheated several innocent investors of crores of rupees. Several FIRs were lodged

A against the Petitioner and 48 cases were instituted against him in six different States for commission of offences punishable under ss. 406, 409 and 420 r/w s.120B, IPC and also under s.138 of the Negotiable Instruments Act, 1881.

Since the offences allegedly committed by the Petitioner were non-bailable, police authorities arrested him and he was taken in custody. The Petitioner is an under-trial prisoner since more than ten years i.e. since August, 1998 and he has approached this Court for protection of his fundamental rights under Arts. 14, 19, 20 and 21 of the C Constitution by an appropriate direction to the Respondents so that he may be able to come out of jail as also make arrangement for his defence.

The Petitioner submitted before this Court that even though he has been ordered to be enlarged on bail in some of the cases, he is unable to come out since in other cases, either the investigation is in progress or the Petitioner has not been produced before the Magistrate for trial; that even if the Petitioner is convicted in some of the cases for some offences, he may have to remain in jail E only for few years and that therefore, even if it is assumed for sake of argument that the Petitioner will be convicted, incarceration suffered by him by now might be more than the sentence which could be imposed on him. It was, therefore, submitted that an appropriate direction may be F issued so that the Petitioner may be released on bail.

The Petitioner also invited attention to s.436A of CrPC, which provides maximum period for which an under-trial prisoner may be detained, and on that basis submitted that during pendency and final disposal of the crirnG nal cases, he may be ordered to be enlarged on bail on his executing a personal bond.

Partly allowing the Writ Petition and issuing certain directions, the Court

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HELD: 1. On the facts and in the circumstances of the case, the Petitioner deserves some relief from this Court. True it is that as per the allegation of the prosecution, various offences have been committed by the petitioner and those cases are pending at different places. But another equally important fact also cannot be overlooked that he is in jail since more than ten years. *Prima facie,* the submission of the Petitioner is well-founded that only if he comes out of jail that he may be able to make arrangement for repayment of amount and also to defend cases registered against him. It would be appropriate in the facts and circumstances of the case, if limited relief is granted to the Petitioner. So far as consolidation of cases and trial of all the cases in one Court is concerned, such relief cannot be granted. [Paras 24, 34] [707-C-D; 712-A-B]

2. As regards s.436A, the said provision was inserted by Amendment Act of 2005 and came in force in June, 2006. Since no retrospective effect has been given to the said provision, s.436A does not directly apply to the facts of the case. [Paras 31, 33] [710-E-F; 711-G]

3. On overall facts and circumstances, and keeping in view the fact that the Petitioner is in jail since more than ten years, the ends of justice would be served, if the following directions are issued:

a) If the petitioner will apply for bail, an appropriate Court will release him on bail on his executing a bond to the satisfaction of such Court;

b) If the petitioner is not arrested but is likely/required to be arrested, the Arresting Officer shall release him on bail on his executing a bond to the satisfaction of the Arresting Officer;

c) The above relief will be granted to the petitioner only in those cases where he is arrested in his capacity as Managing Director/Director of Imperial Forestry Cor-

poration Ltd.;

d) Such relief will be allowed to the petitioner on his giving an assurance/ undertaking that he will remain present in the court concerned as and when his case is posted for hearing or his presence is required;

e) It is open to the petitioner to apply to the Court concerned for exempting him from personal appearance. The Court will pass an appropriate order on such application on such terms and conditions as the Court deems fit;

f) If the petitioner is having a passport with him, he will surrender his passport to police authorities. The police authorities will retain the same till the final disposal of all the cases;

g) It is open to the investigating agency in any case to move a competent Court for cancellation of bail/modification of conditions, if any such investigating agency finds that petitioner is misusing the liberty granted by this Court; [Para 35] [712-B-H; 713-A-B]

State of Punjab & Anr. v. Rajesh Syal, (2002) 8 SCC 158 – relied on.

V.K. Sharma v. Union of India & Ors., (2000) 9 SCC 449 – held overruled in (2002) 8 SCC 158

Narinderjit Singh Sahni & Anr. v. Union of India & Ors., (2002) 2 SCC 210 – referred to.

Case Law Reference

(2000) 9 SCC 449	held overruled	Para 25
(2002) 8 SCC 158	relied on	Para 27
(2002) 2 SCC 210	referred to	Para 30

WRIT APPELLATE JURISDICTION : Writ Petition (CRI) No. 58 of 2007

Dr. N.M. Ghatate, Pramit Saxena, Amit Yadav and Yash Pal Dhingra for the Appellant. A

Gopal Subramanium ASG, Ratnakar Dash, Kumar Kartikay, Ranvijay, Jatinder Kumar Bhatia, Aruneshwar Gupta, Naresh K. Sharma, Navin Prakash, Sushma Suri, Ashok Bhan, Subhash Kaushik, D.S. Mahra, Sandeep Singh and Anuvrat Sharma for the Respondents. B

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. Rule. We have heard the learned counsel appearing in the case. On the facts and in circumstances of the case, the writ petition has been taken up for final hearing. C

2. The present petition is filed by the petitioner under Article 32 of the Constitution. The prayer clause reads thus;

"It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:- D

(a) Issue appropriate writ in the nature of Mandamus or any direction or order to release the petitioner on bail in connection with the cases as mentioned in Annexure P-14 forthwith on execution of personal bond with or without sureties; and E

(b) Issue appropriate writ in the nature of mandamus or any direction or order directing that if the petitioner is arrested in connection with any criminal case in capacity of Managing Director of Imperial Forestry Corporation Ltd., the arresting officer shall release him on bail on his executing the personal bond to the satisfaction of arresting officer; and F

(c) Issue appropriate writ in the nature of Mandamus or any direction or order directing the respondents to evolve a mechanism to ensure the presence of the petitioner in all the cases as well as speedy disposal of all the cases pending against the petitioner within a fixed time frame; G H

A (d) Issue appropriate order to treat the petitioner in custody, in cases where petitioner has not been produced, from the date of service of production warrant on the petitioner and adjust the same for the purpose of bail u/s. 436A of Cr.P.C.

B (e) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case".

3. The case of the petitioner is that, he is an under-trial C prisoner lodged in District Jail, Bareilly since more than ten years *i.e.* since August, 1998. He has approached this Court for enforcement of fundamental rights guaranteed under Articles 14, 19, 20 and 21 of the Constitution of India.

4. It is the case of the petitioner that he has been impli- D cated as an accused in as many as 48 cases in six different States for commission of offences punishable under Sections 406, 409 and 420 read with Section 120B of the Indian Penal Code, 1860 (IPC) and also under Section 138 of the Negotiable Instruments Act, 1881.

E 5. According to the petitioner, there is a Company known as "Imperial Forestry Corporation Ltd." (hereinafter referred to as 'the Company'). It was incorporated on April 19, 1990. The petitioner was the Managing Director of the said Company. In the course of business, the Company had opened Branch Of- F fices at several places. The petitioner asserted that he resigned from the office as the Managing Director on October 30, 1994 and later on he also resigned as Director of the Company from February 15, 1998.

G 6. It was the case of the petitioner that when he was functioning as the Managing Director or as the Director of the Company, there was no complaint of any kind from any of the investors either for non-clearance of cheques issued to them or for non-payment of dues of the depositors by the Company. Later on, however, financial position of Investment Companies be- H

came precarious throughout the country. Investors became suspicious and they rushed to companies for refund of money and for return of their deposits which resulted in Financial Companies being collapsed. The petitioner, since he was Managing Director and Director in past, was also joined as one of the accused in several cases. The petitioner has annexed along with the present writ petition, 48 cases which have been filed against him in six different States.

7. According to the writ petitioner, he was arrested in August, 1998 and till today he is in jail. The petitioner stated that in some of the cases he has not at all been produced before the Magistrate. Resultantly, he could not even apply for bail. The trials have not commenced although so many years have passed. In some other cases, though the charges have been framed, hundreds of witnesses are likely to be examined and it would take several years in completion of the cases. In some other cases, prosecution witnesses have not turned up and concerned Courts have issued either bailable or non-bailable warrants to secure the presence of witnesses. In few cases, though the petitioner was ordered to be enlarged on bail, in view of pendency of other cases, even though the petitioner is ready and willing to abide by the terms and conditions imposed by the Magistrate for release on bail, he is unable to come out of jail.

8. The petitioner further stated that he has not committed any offence. According to him, he had resigned as Managing Director as well as Director since long and, as such, no case can be filed nor any offence has been made out against him. It is only because the cases are not tried and decided that he is in jail.

9. Alternatively, it was submitted by the petitioner that even if the petitioner will be convicted in some of the cases for some offences, he would be ordered to undergo imprisonment which may be for some time. Unfortunately, as an under-trial prisoner, he has completed more than ten years in jail. He is, therefore,

A constrained to approach this Court for protection of his fundamental rights by an appropriate direction from this Court to the respondents so that he may be able to come out of jail as also make arrangement for his defence.

10. On May 18, 2007, notice was issued by this Court. B Considering the fact that the petitioner was in jail, the Registry was directed to place the matter for final hearing. Accordingly, the matter has been placed before us on August 18, 2008.

11. The respondents have filed affidavits. Respondent C No.1-Union of India, in its affidavit through Under Secretary of the Ministry of Home Affairs, Government of India, New Delhi stated that no allegations have been leveled against the Union of India nor specific prayer has been sought against the Union.

12. It was also stated that by the Code of Criminal Proce- D dure (Amendment) Act, 2005, Section 436A came to be inserted which provides that an under-trial prisoner other than the one accused of an offence for which death has been prescribed as one of the punishments, has been under detention for a period extending to one-half of the maximum period of imprisonment E provided for the alleged offence, he should be released on his personal bond, with or without sureties.

13. It was also stated by the deponent that 'prisons' is a State subject covered by Entry 4 of List II of the Seventh Schedule to the Constitution. It is, therefore, the State authorities to F undertake administration of prisons under the Indian Prisons Act, 1894. State Governments have also framed Jail Manuals and appropriate Government is required to take appropriate action in accordance with law.

G 14. An affidavit is also filed by the State of U.P. through Deputy S.P., E.O.W., Meerut, U.P. In the said affidavit, it was stated that the petitioner was Managing Director of Imperial Forestry Corporation Ltd. and was actively associated with the day to day running of the business of the Company. The Company had opened several Branches and Divisional Offices, *in-* H

ter alia, in the State of U.P. and appointed Marketing Managers along with the team of Sale Executives who used to collect money from the public by issuing Fixed Deposit Receipts (FDRs). The petitioner, in the said capacity amassed crores of rupees from public at large. When the maturity amount was not paid to the investors, several First Information Reports (FIRs) came to be lodged against the petitioner and that is how criminal cases were filed.

15. The deponent had also given list of some of the cases pending in the State of U.P. It is in the above circumstances that the petitioner was sent to jail and is unable to come out.

16. As held by this Court, mere long period of incarceration in jail would not be *per se* illegal. If the petitioner has committed offences, he has to remain behind bars. Such detention in jail even as an under-trial prisoner would not be violative of Article 21 of the Constitution. If the petitioner has committed non-bailable offences and in connection with those offences, he is in jail, the custody can never be said to be unlawful or contrary to law and he is not entitled to be enlarged on bail.

17. Similar affidavit is filed by C.O. City, Dehradun, Uttarakhand stating therein that various complaints were filed against the petitioner and in pursuance thereof, the petitioner has been taken into custody.

18. We have heard learned counsel for the parties.

19. The learned counsel for the petitioner submitted that the petitioner has been in jail since more than a decade. Various cases have been instituted against him in six States. Even though the petitioner has been ordered to be enlarged on bail in some of the cases, he is unable to come out since in other cases, either the investigation is in progress or the petitioner has not been produced before the Magistrate for trial. Even if the petitioner is convicted in some of the cases for some offences, he may have to remain in jail only for few years. Therefore, even if it is assumed for the sake of argument that the

A petitioner will be convicted, incarceration suffered by the petitioner by now might be more than the sentence which could be imposed on him. It was, therefore, submitted that an appropriate direction may be issued so that the petitioner may be released on bail.

B 20. The petitioner has also invited our attention to Section 436A of the Code which provides maximum period for which an under-trial prisoner may be detained. It was, therefore, submitted by the learned counsel for the petitioner that during the pendency and final disposal of criminal cases, the petitioner C may be ordered to be enlarged on bail on his executing personal bond.

21. The learned counsel for the respondent, on the other hand, submitted that systematic fraud has been committed by D the petitioner and he has cheated several innocent investors at various places. Crores of rupees had been collected by him in the capacity of Managing Director of the Company. It was only when he refused to refund the amount that criminal cases have been filed against him for which the petitioner alone is responsible. Since the offences said to have been committed by the E petitioner are non-bailable, the police authorities had arrested him and he is taken in custody in accordance with law. No grievance, therefore, can be made by the petitioner against lawful action taken by the investigating authorities. If it is so, the petitioner cannot invoke Article 21 of the Constitution. Even if the F petitioner is ordered to be enlarged on bail in some of the cases, other cases pending against him cannot be ignored.

22. It was further submitted that the petitioner forgets that he can be convicted in several cases for the offences with which G he is charged. All those cases are different, distinct and independent. In that case, obviously, he may have to remain in jail for several years.

23. Regarding applicability of Section 436A of the Code, it was stated that firstly, the said provision came to be inserted H by an Amendment Act of 2005 which came in force in June,

2006 and as such, it has no application to the present case. But, even if the said provision applies to the case of the petitioner, in view of several cases at various places committed by the petitioner, he would not get the benefit of the aforesaid provision. It was, therefore, submitted that the petition deserves to be dismissed.

24. Having heard learned counsel for the parties and having gone through the writ petition along with annexures as also counter-affidavits, we are of the view that on the facts and in the circumstances of the case, the petitioner deserves some relief from this Court. True it is that as per the allegation of the prosecution, various offences have been committed by the petitioner and those cases are pending at difference places. But other equally important fact also cannot be overlooked that he is in jail since more than ten years. *Prima facie*, the submission of the learned counsel for the petitioner is well-founded that only if the petitioner comes out of jail that he may be able to make arrangement for repayment of amount and also to defend cases registered against him.

25. The learned counsel, in this connection, invited our attention to a two Judge Bench decision of this Court in *V.K. Sharma v. Union of India & Ors.*, (2000) 9 SCC 449. In *V.K. Sharma*, the petitioner was an accused in a large number of cases punishable under Sections 406, 409, 420 read with Section 120B, IPC in several States. There also, in spite of securing bail orders in his favour in some of the cases, the petitioner had to remain in jail in view of production warrants issued by other Courts. The petitioner, in that case too, approached this Court by filing a petition under Article 32 of the Constitution alleging violation of his fundamental right guaranteed under Article 21 of the Constitution, seeking an appropriate writ, direction or order that he should be released on bail and all the cases pending in different States against the petitioner be consolidated in one and the same Court through investigation by Central Bureau of Investigation (CBI) in all cases. This Court considered the rival contentions of the parties. It did not think proper

A to grant all reliefs sought by the petitioner, but granted the following reliefs to him;

1. If the petitioner is arrested in connection with any criminal case in his capacity as Managing Director/ Director of JVG group of companies the arresting officer shall release him on bail on his executing a bond to the satisfaction of the arresting officer.

2. Such relief shall be made after getting an assurance from him that he will be present in the court concerned on the days when his case is posted. However, we make it clear that it is open to the petitioner to apply to the court concerned for exempting him from personal appearance on condition that a counsel on his behalf would be present on such posting dates and he would not dispute his identity as the particular accused in that case, and further that he would make himself available on any date when his presence is imperatively needed in that court.

3. *We permit the petitioner to move the appropriate high courts for bringing all the cases pending in different courts within the territorial jurisdiction of that high court to one single court or more than one court (depending upon the number of cases or the width of the area of the State is concerned).*

4. This order will come into effect only if the petitioner would surrender his passport in this Court. Shri Shanti Bhushan, learned senior counsel expressed a doubt that petitioner would have already surrendered his passport before another court pursuant to the order passed. In that case he can satisfy the Registrar General of this Court by an affidavit of the situation and the Registrar General can intimate the jail authorities concerned of that position.

5. We make it clear that it is open to the investigating

agency in any case to move for cancellation of bail if any such investigating agency finds that petitioner is misusing the liberty granted by this order. A

(emphasis supplied)

26. This Court thus in *V.K. Sharma* granted certain relief keeping in view the fact that the accused was in jail since about sixteen months. The Court further held that if the petitioner would be arrested in any criminal case in his capacity as Managing Director/Director of the Company, the Arresting Officer would release him on his executing bond to the satisfaction of the Arresting Officer. B C

27. The learned counsel for the respondents, however, referred to a decision of a three Judge Bench of this Court in *State of Punjab & Anr. V. Rajesh Syal,* (2002) 8 SCC 158. In *Rajesh Syal,* the respondent was a former Director of a Company. The Company collected huge amount from general public for purchasing land and promised that the amount would be returned after expiry of maturity period fixed through cheques. Monies were not repaid and complaints were made to the State. The Vigilance Department of the State lodged various FIRs against the respondent. D E

28. According to the prosecution case, crores of rupees had been collected by the Company from the general public. Proceedings were initiated by the accused by filing an application under Section 482 of the Code in the High Court for quashing of criminal proceedings. A prayer was also made that all cases be tried by one Court. Support was sought from *V.K. Sharma.* Though in the decision of *V.K. Sharma,* this Court had stated that the order could not be treated as a 'precedent', the High Court, by treating the order as a 'precedent' allowed the petition of the accused and transferred different cases pending in the State of Punjab against the accused to a Court of Special Judge. The said action was challenged by the State in this Court. F G

29. Considering the relevant provisions of the Code, par- H

A ticularly relating to framing of charge and conduct of trial, this Court held that in the light of various provisions and the scheme of the Code, no direction could be given by a Court to consolidate all cases against the accused and to be tried by one Court. Such a direction would be contrary to express provisions of the B Code. Even in exercise of inherent powers under Section 482, the High Court could not direct an authority to act contrary to law. The Court also observed that this Court has ample jurisdiction to pass orders under Article 142 of the Constitution for doing complete justice between the parties in any case or matter C but it is doubtful whether in exercise of the said power, such an order could be passed. The Court held that direction as to consolidation of cases pending in different Courts for different offences to be tried in a single Court issued in *V.K. Sharma* was not in consonance with law. *V.K. Sharma* was, therefore, ex- D pressly overruled.

30. *Narinderjit Singh Sahni & Anr. v. Union of India & Ors.*, (2002) 2 SCC 210 was also referred to. In that case, this Court held that if an accused commits an offence, he has to remain in jail and he cannot make complaint to this Court under E Article 32 of the Constitution on the ground of so called infraction of Article 21.

31. So far as Section 436A is concerned, it may be stated that by the Code of Criminal Procedure (Amendment) Act, 2005, the said section came to be inserted, which reads as under;

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> "436A. *Maximum period for which an undertrial prisoner can be detained.*—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the G punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

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Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties: A

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law. B

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded." C

32. In the statement of objects and reasons it was stated; D

There had been instances, where under-trial prisoners were detained in jail for periods beyond the maximum period of imprisonment provided for the alleged offence. As remedial measure section 436A has been inserted to provide that where an under-trial prisoner other than the one accused of an offence for which death has been E prescribed as one of the punishments, has been under detention for a period extending to one-half of the maximum period of imprisonment provided for the alleged offence, he should be released on his personal bond, with or without sureties. It has also been provided that in no F case will an under-trial prisoner be detained beyond the maximum period of imprisonment for which he can be convicted for the alleged offence.

33. The learned counsel for the respondents are, *prima facie,* right in submitting that no retrospective effect has been G given to the said provision and as such Section 436A does not directly apply to the facts of the case.

34. In our opinion, however, the hard reality equally important also cannot be lost sight of the fact that the petitioner is in H

jail since more than ten years. It would, therefore, be appropriate if limited relief is granted to the petitioner. So far as consolidation of cases and trial of all the cases in one Court is concerned, as observed hereinabove, such relief cannot be granted. *V.K. Sharma,* wherein such relief was granted, has been expressly overruled by *Rajesh Syal.* We are, therefore, of the view that the petitioner is not entitled to such relief.

35. On overall facts and circumstances, in our opinion, the ends of justice would be served if we partly allow the petition and issue the following directions:

1. If the petitioner will apply for bail, an appropriate Court will release him on bail on his executing a bond to the satisfaction of such Court.

2. If the petitioner is not arrested but is likely/required to be arrested, the Arresting Officer shall release him on bail on his executing a bond to the satisfaction of the Arresting Officer.

3. The above relief will be granted to the petitioner only in those cases where he is arrested in his capacity as Managing Director/Director of Imperial Forestry Corporation Ltd.

4. Such relief will be allowed to the petitioner on his giving an assurance/ undertaking that he will remain present in the court concerned as and when his case is posted for hearing or his presence is required.

5. It is open to the petitioner to apply to the Court concerned for exempting him from personal appearance. The Court will pass an appropriate order on such application on such terms and conditions as the Court deems fit.

6. If the petitioner is having a passport with him, he will surrender his passport to police authorities. The police authorities will retain the same till the final disposal of all the cases.

7. It is open to the investigating agency in any case to move a competent Court for cancellation of bail/ modification of conditions, if any such investigating agency finds that petitioner is misusing the liberty granted by this Court. A

8. The above directions have been issued by us in special circumstances keeping in view the fact that the petitioner is in jail since more than ten years. B

36. We may make it clear that the above order is passed without prejudice to the rights and contentions of the parties. C

37. The writ petition is accordingly partly allowed to the extent indicated above.

B.B.B. Writ Petition Partly allowed.